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MEMORANDUM FOR:   
Legislation Division, Office of Legislative Liaison

FROM: Robert W. Magee  
Director of Personnel

SUBJECT: State Department Report on H.R. 5197

REFERENCE: Your Memo to DD/Pers/SP, dtd 10 May 84, Same Subject

1. We have reviewed the State Department report on H.R. 5197 and generally concur with the assessments and remarks made in the report. Many of the provisions have no impact on the Agency, being solely related to State Department programs or conforming to procedures already in effect for the Civil Service and the Agency. There are, however, certain items which would or should be applied to the Agency, if enacted in this legislation. We can also reasonably assume that attempts would be made to legislate certain other provisions for the Agency if enactment is successful for the State Department. In this regard, the following comments on specific provisions are provided for your information and utilization in responding to the Office of Management and Budget (OMB) where indicated:

Section 104 Employment of Family Members

This section would require "preferential consideration" for the families of members of the Foreign Service vice "equal consideration" for employment at posts abroad. We support the State Department's position that "equal consideration" provides for more equitable treatment of all U.S. Government dependents abroad and recommend this support be communicated to OMB.

Section 108 On-Call Pay

This amendment would create an entitlement to "on-call pay" for Foreign Service personnel when such individuals are on call outside regular duty hours while overseas. If enacted, we would want to review our options to adopt this benefit, particularly with respect to our communications officers serving overseas. No comment to OMB is necessary at this time.

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#### Section 115 Elections Concerning Survivor's Annuities for Former Spouses

This amendment would permit the election, by spousal agreement, of a reduced survivor annuity for a former spouse within 12 months after a divorce in the event a divorce occurs after retirement. The 12-month provision is already part of our existing CIA Retirement and Disability System law; the ability to elect a reduced survivor annuity for a former spouse is not currently in the law (currently the election must be for a maximum survivor annuity or none at all). If enacted for the State Department, we may want to consider requesting conforming legislation to include the provision for the election of a reduced survivor annuity into CIARDS law. No comment to OMB is necessary at this time.

#### Section 118 Lump Sum Payments

This section requires there be a separation from the service for at least 31 consecutive days to be eligible for a refund of retirement contributions and also eliminates the right of a former spouse, who remarries prior to age 60, to a share of the lump sum payment. The 31-day rule is already part of CIARDS legislation. However, the oversight in the 1980 Foreign Service Act, not to deny lump sum payment to a former spouse who remarries prior to age 60, was also an oversight in the CIARDS former spouse legislation. If enacted for State, we should consider conforming legislation for CIARDS. No comment is necessary to OMB at this time.

#### Section 121 Health Care

The main provision of this section authorizes the continued enrollment of former spouses of members of the Foreign Service in Government health insurance plans. To continue the enrollment, the former spouses would have to pay the full premium costs, employee plus Government share. We do not object to the intent of the legislation, but foresee some potential cover and security problems with inherent resource complications, if subsequently enacted for the Agency. Recommend we support the State Department inference that it would perhaps be better to incorporate this amendment into Chapter 89, Title 5, U.S. Code rather than the Foreign Service Act, thus facilitating the consistency of this provision with the Government-wide programs. This would also, in general, be more beneficial to the former spouses by allowing changes during open season, an area not clear in the proposed amendment.

#### Section 125 Annuities for Former Spouses

This amendment would authorize pensions and survivor annuities to former spouses not covered by the Foreign Service Act of 1980. (Under existing law only former spouses divorced after 15 February 1981 are eligible for such benefits.) The cost would be funded by the Foreign Service retirement fund with no accompanying reduction in benefits to an annuitant.

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We generally concur with State's comments and assessment of this particular section. While not opposed to the intent of the legislation, passage in this form would create problems in equity, in administration, and in funding.

When the original CIA Spouse Equity Act was passed, Congress stated there would be no cost to the U.S. Government because there would be a corresponding reduction in the employees' annuity to pay for the former spouse benefit. This amendment is contrary to the "no cost to the U.S. Government" rationale. The amendment would also entitle former spouses to receive benefits apparently without the oversight of a divorce court, which is not the situation for those covered under existing law. There would also be further inequities because one group of retirees will have their annuities reduced to provide former spouse entitlements while other retirees would not incur such reductions. Recommend these anomalies be communicated to OMB.

#### Section 203 Overseas Differential and Allowances

The purpose of this amendment is to allow advance payment of differentials, as is now the case for allowances. We agree with State's analysis that this would create extra cost and administrative problems with refunds associated with short-of-tours and that the justification to make advance payment on differentials is not as strong as that for allowances. Recommend support of State's analysis be sent to OMB.


#### Section 205 Advances of Pay

This provision would allow employees to receive advances in pay upon assignment to a post in the U.S. from a post overseas. We believe this is most appropriate and disagree with State's inference that there may be less financial difficulty upon transfer to the U.S. Such employees could easily incur one-time expenses for security deposits, rents in advance, home leave, etc., that are as burdensome as expenses found when assigned overseas. Recommend this be communicated to OMB.

#### Sections 301 through 308 Extends and Amends Portions of the Hostage Relief Act of 1980


Section 307 authorizes the President money to provide unspecified hostage benefits, in addition to any other benefit provided by law, to any American hostage or to their surviving spouse or dependents if death occurs while in a captive statue. It should be noted that since non-U.S. citizens do not qualify for this benefit, a number of Agency employees could not be recipient under this section. We therefore suggest a change in the section be recommended to OMB to include resident aliens employed by the U.S. Government on assignment to a tour-of-duty abroad.

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2. If you have any further questions on our comments, please  
contact 

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